

Washington, D.C. -- Congresswoman Linda Sánchez, Chair of the Judiciary Committee's Subcommittee on Commercial and Administrative Law (CAL), today held an oversight hearing to determine whether Chapter 11 of the Bankruptcy Code is working as Congress intended and how the increase in business bankruptcies fits into the current economic crisis that has engulfed the country. The hearing examined recent bankruptcy filings by Lehman Brothers, Sharper Image, Bennigan's and others.

"The financial crisis gripping the United States has led to unprecedented government bailouts of private companies and a surge in business bankruptcies and just last week, Lehman Brothers filed for bankruptcy under Chapter 11, the largest filing in U.S. history," said Chairwoman Linda Sánchez. "On the eve of Lehman's bankruptcy filing, it apparently utilized the netting provisions of the 2005 Bankruptcy Code amendments to offset various financial contracts it had outstanding."

Chapter 11 filings, where a company attempts to stay in business, are up 30 percent. Lehman Brothers filed for Chapter 11 bankruptcy with total debts of \$613 billion against total assets of \$639 billion. This filing dwarfed the previous largest bankruptcy in 2002 of WorldCom Inc., which had \$104 billion in assets. American Bankruptcy Institute data also indicates that during the first half of 2008, there were 55 percent more Chapter 7 liquidations than last year.

"A disturbing trend that appears to be developing is that more and more retailers are opting to liquidate rather than reorganize," said Chairwoman Sánchez. "Some blame the overall economic climate. Some blame the credit crunch. Those in the bankruptcy community believe that the 2005 amendments, including, for example, the non-residential leasehold provision, are the principal cause of retailers choosing to close their stores, layoff their employees, and liquidate their assets, rather than attempt to reorganize."

Witnesses included Jay Westbrook, a Professor at the University of Texas School of Law, Barry E. Adler of New York University School of Law and Lawrence Gottlieb, Esq., of Cooley Godward Kronish LLP. Chairman and CEO of Lehman Brothers, Richard S. Fuld, was invited to testify at the hearing but was not able to make himself available. Congresswoman Sánchez suggested the committee conduct a further hearing at which Mr. Fuld will have an opportunity to testify.

"We haven't seen such a significant economic crisis in our Nation's history since the Great Depression," said Chairwoman Sánchez. "It is imperative that we examine the role of bankruptcy law and any other factors affecting the crisis."